



2007 AB 305

State Representative

**Samantha J. Kerkman**

*Assembly Bill 305 - The "Final Rights" Act  
Exercising your Final Right  
Assembly Committee on State Affairs  
May 29, 2007*

Have you ever thought about death –not just the death of a loved one, but **your** own death? Can you picture where you want to be buried, interred, or cremated? In your head do you know the music you want played at your funeral? Or, have you decided that you don't want a funeral?

Too often that is exactly what has happened - you've thought about what you want, but failed to tell a family member or friend. Or, instead, you've told your sister one thing and your son something else as the years have gone on. Then upon your passing, no one really knows what it was that you wanted. So what happens to you? That song you really wanted played doesn't get played and your ashes don't get scattered where you wanted them to be, instead the passions of individual family members may be respected and not your final wishes. Assembly Bill 305 allows individuals the opportunity to control their own funeral arrangements and determine the disposition of their remains at death.

Under current law when faced with the death of a loved one, family members must work together to agree on funeral arrangements, type of disposition, service etc. Often this can lead to tension amongst family members due to differing opinions. And, ultimately, the wishes of the decedent may or may not even be carried out.

The Final Rights Act will:

- Summary*  
*Bill 305*
1. Allow <sup>a person</sup> ~~one~~ to create an advanced directive, also known as an "authorization for final disposition." This authorization can express any directions for disposition of the declarant's body after death. This may include funeral arrangements, cremation versus burial or any other detail deemed to be of significance. (*music, photos, etc.*)
  2. Create a legally binding document to ensure that the wishes of the declarant are carried out as set forth (unless the directions exceed estate resources, are unlawful or there is no realistic possibility of compliance).

- a person*
3. Allow ~~one~~ to appoint a ~~person~~ (a representative) to ensure that their wishes are carried out upon death. If no representative is named, a priority list of those authorized to dictate the final disposition is included within the bill, along with a procedure for resolving disputes should one arise.
  4. Creates a standardized, but optional, form to provide for ease in preparation of an authorization.
  5. Finally, if an individual purposely conceals or defaces an authorization without consent, a fine of not more than \$500 or imprisonment for not more than 30 days may occur.

More than half the states already have similar statutes in place. This bill will not only ease stress for loved ones who often have had to make difficult decisions with no directions from a decedent, but it will also allow the individual the chance to make his decisions in advance. Most importantly, these choices would have to be carried out. This is truly a final right, the ability to declare one's final wishes.

Finally, I would like to advocate for the inclusion of an amendment to the legislation (AA1 to AB305 by Kerkman and Sherman). In the language of AB305 there is a list of those who are allowed to petition probate court for control of disposition (page 8 lines 4 - 14). We, without any good reason, excluded individuals who claim a closer personal relationship to the decedent than the decedent's next of kin, and who was not in the employ of the decedents or the decedent's family that has not lived with the decedent. This requirement, that the individual must live with the decedent, is certainly not necessary. I can imagine a situation where a fiancé may attempt to claim a closer relationship than the decedent's family member who lives out of state. There is certainly no reason for us to prohibit them the opportunity to appeal to the court for control, simply because as fiancée's they chose not to live together. I request that the committee, during consideration of this bill, include this amendment in the final product.

Some of you may think that this legislation has been "ripped from the headlines." I'm sure many of you recall the saga over the control of Anna Nicole Smith's body. In reality, this legislation represents years of work. I can tell you that this bill has been painstakingly reviewed and compared, to ensure that Wisconsin consumers will have the best opportunity to ensure that their final rights are respected.

This bill has received support from the Wisconsin Funeral Directors Association, Funeral Service Alliance of Wisconsin and the Wisconsin Cemetery and Cremation Association. I anticipate you will be hearing from a number of them today.

At this time I will be happy to take any questions that the committee may have.

**To: Assembly Committee on State Affairs, Rep. Karl Van Roy, Chair**

**Re: Assembly Bill 305: control of final disposition of certain human remains and providing a penalty.**

My mother and her parents left their homeland of Lithuania in 1944, escaping Stalin's occupation and assured deportation to Siberia. My grandparents were by no means wealthy, but they were middle class, educated landowners, and my mother was a teacher. Stalin didn't want those kind of people around. In a matter of a few hours, they packed a few things into their wagon, hitched the horses and left their farm, never to return. After the war, they found themselves in the same displaced person, or DP camp as they were known in those days, with my father, also a Lithuanian who had spent the last two years in a German concentration camp. My parents married there and they all came to Wisconsin in 1949.

My grandparents always lived close by, eventually right next-door with our yards connected by a quaint white picket fence and gate. I spent a great deal of time with them and loved them dearly. I grew up bi-lingual, but my grandmother sat me down for many an hour to make sure I learned how to read and write Lithuanian as well. She had been a teacher herself, and had even risked her life to teach the language clandestinely to school children during the late 1800s during the Russian imposed press ban, a 40 year period when the Lithuanian language was outlawed in print and in the schools. She had also taken part in what was called the Book Carriers Movement, where books printed in Germany, or then East Prussia, were smuggled into Lithuania and distributed.

She was also a devout Catholic who went to church early every morning, and my grandfather even acted as an "alter boy" at the church that had a substantial number of Lithuanian DPs in the congregation. At least once a year, beginning around the time that I was 8 years old or so, my grandmother would take me by the hand and show me the box where she kept the garment she had designed and sewn which she wanted to be buried in. It was a very simple dress, made of a fine dark brown wool gabardine. There was also a special wooden rosary she had brought with her from the old country that was to be specifically buried with her. She would also instruct me on the proper behavior at the funeral, I suspect because she thought she might die any time and I was still quite young.

I came to be a little annoyed by this annual routine, responding with a sigh when I saw it coming, but when the time finally came in 1977 when I was 20 years old and attending college, I knew exactly what she wanted me to do. The funeral home we used was a given - the same one all the other Lithuanians used which was a few doors down from the church. I went with my mother to make the arrangements. It was strange to be there so soon again, as we had just been there five days before making the arrangements for my grandfather.

My grandfather had never given me any special instructions, but I knew him well. I just picked out a nice suit of his and brought it to the funeral home. When we made

the arrangements, we did make one very specific, very clear instruction: no makeup. Absolutely no makeup. My grandfather was a dignified and humble man, and he would have found it ridiculous to have his face painted in an attempt to make him "look good." We knew he was dead and so would everyone else.

When I got to the funeral home prior to the visitation and went to the casket I was appalled. Actually, I was outraged. That was not my dead grandfather lying there, but a caricature of my grandfather. He had so much makeup on that he looked like a clown, a cheap discount store mannequin. I could hardly contain my anger and immediately demanded an explanation as to why our specific instruction had been ignored.

The funeral director stammered something about our being grief-stricken and not knowing what it was that we were asking, and that if they had complied we would have been mortified as the dead body would really look awful, and they knew better what to do than we did. Perhaps that might have had some merit directed at me, as I had little experience with death. The same could not be said for my parents; by the time they made it to this country, they had seen a lot of death, more than any human being should have to.

This business of funeral homes and making up the bodies for presentation is a relatively modern invention. I understand it really only came into common practice in the 1930s. Till then, most people, particularly rural folk, took care of their own and a wake or visitation occurred in ones home. There was no makeup, no embalming, none of the trappings so prevalent in the modern funeral and burial industry of today. We in our society have estranged ourselves from this most intimate, personal, and meaningful experience. I do not believe that it has necessarily been a positive development.

So, when we came to the funeral home to arrange my grandmother's funeral, I was most adamant that **absolutely no makeup** be applied to my grandmother. She also was a dignified and humble woman, never wore so much as a bit of rouge on her cheek nor a spot of color on her lips her entire life. Never. She was one of those typical "Devatkas" who wore scarves on their heads both in and out of church. I remember thinking that my grandmother had never aged, but that she was hardly ever young either, as she looked the same in 1950 as she did the day she died. She had had a hard life.

We informed the funeral director that we didn't care how much they thought they were protecting us from a ghoulish sight, we were not persuaded by their professional opinion, they were providing a service to us for which they were being handsomely paid and they were to do as instructed.

Guess what? That's right. They purposely defied our instructions. We were furious. I could have gotten a washcloth, I suppose, and wiped the makeup off her face myself. I suppose we could have refused to pay the bill, but we didn't do that either. The anger and disappointment caused, the humiliation I felt for both myself and for my

grandmother, was very hard to bear, particularly having suffered the loss of two of the most important and beloved people in my life in one week.

My family and I were made helpless victims of a cavalier and dishonest funeral home. I vowed then never to do business with a funeral home again. Luckily, I have never had occasion since then to be faced with even having to possibly reconsider.

I realize that the funeral home industry will assert that what happened in our case was an anomaly, and perhaps it was. But that doesn't change the fact that it should not have happened and that it caused a lot of unnecessary pain.

I urge you to support this bill, so that it will be impossible for anything like what happened to my family to occur to anyone else. What's more, it provides for something quite like my grandmother's annual instruction. It really was helpful, in my time of grief, to have a clear mind and be decisive about exactly what it was that my loved one wanted as her final rite. It could have been beautiful.

Respectfully submitted this 29<sup>th</sup> day of May, 2007.

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**FSA of WISCONSIN**  
Funeral Service Alliance of Wisconsin

May 29, 2007

Assembly Committee on State Affairs  
Representative Karl Van Roy, Chair  
PO Box 8953  
Madison, WI 53708

Dear Chairman Van Roy and Members,

On behalf of the Funeral Service Alliance of Wisconsin (FSA), I would like to personally thank you for allowing me to register in favor of Assembly Bill 305, the declaration of final disposition bill.

FSA is a professional trade association representing funeral establishments and directors throughout Wisconsin. In an ever-increasing diverse and expanding family unit, decisions relating to the manner of disposition, funeral arrangements and observances pertaining to final wishes are becoming more strained and disparate. AB 305 would afford individuals their own opportunity to control their funeral arrangements and disposition of their remains at their time of death, thereby easing what could be a very tense time for the remaining family members and friends.

AB 305 is a very consumer-friendly piece of legislation, and again, on behalf of the Funeral Service Alliance of Wisconsin, I am happy to support this bill for consumers throughout the state.

Sincerely,

Greg Jones  
President, FSA